



2047228

Page: 1 of 11
05/07/2001 01:32P

BY-LAWS OF THE

ELK GROVE HOMEOWNERS ASSOCIATION, INC.

Concinnity, LLC, ("Concinnity") is the present owner in fee simple of all the property included within the boundaries of the Elk Grove Community, a planned unit development located in Gallatin County. Elk Grove Development Company is developing the residential component of Elk Grove Community pursuant to an agreement with Concinnity, and an Option to purchase all residential lots in Phases 1, 2, and 3. Concinnity is deferring to Elk Grove Development Company for the purposes of these By-Laws, but will assume Elk Grove Development Company's responsibilities and/or appoint another developer in the event Elk Grove Development Company is unable to fulfill its obligations hereunder.

The residential portion of the development is proceeding in three phases. Phase 1 of Elk Grove Community is designated on the official plat on file and of record with the Clerk and Recorder of Gallatin County at Book #2040233^{Record #} of Plats, page _____. Although Phase 2 and Phase 3 of Elk Grove Community have not received final plats, these By-Laws shall apply equally to lots in all three phases and shall be amended to incorporate the final plats for Phases 2 and 3 when these final plats have been recorded with the Clerk and Recorder of Gallatin County. Elk Grove Development Company, hereinafter referred to as the "Developer", does hereby adopt the following By-Laws of the Elk Grove Homeowners Association, with the consent of Concinnity, the record owner of all of the property encompassed by Phases 1, 2 and 3 of Elk Grove Community, which will be affected by these By-Laws. The Developer, with the consent of Concinnity, has also adopted and recorded a Declaration of Protective Covenants and Restrictions for Elk Grove Community Planned Unit Development Phases 1, 2 and 3 (the "Covenants"), a Design Review Board Declaration for



Elk Grove Homeowners Association, Inc. ("Design Board Declaration") and the Elk Grove Community Design Review Guidelines (the "Design Guidelines") which operate and should be construed in conjunction with these By-Laws.

MEMBERSHIP

Every owner of property in the Elk Grove Community shall be a member of the Homeowners' Association (the "Association"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the Association of his acquisition of ownership and his current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the Association. The Association has been incorporated as a non-profit homeowners' association. There shall be two classes of members in the Association. Class A and Class B members, which are defined as follows:

The Association shall have two (2) classes of voting membership:

CLASS "A": Class A membership shall be all lot owners with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such a lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

CLASS "B": The Class B member shall be the Developer, who shall be entitled to five hundred and forty (540) votes. Class B membership shall cease and be converted to Class A membership when ninety percent (90%) of the original lots in Phases I, II and



2047228

Page: 3 of 11
09/07/2001 01:32P

III are sold to third parties. Thereafter, Developer shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

OPERATIONS

MEETINGS

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days nor more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

DIRECTORS AND OFFICERS

Members of the Association shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the Association as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented at any meeting in person or by proxy, at which a quorum is present. The Directors may be removed from time to time at any regularly called meeting of the Association by a vote of two thirds ($\frac{2}{3}$) of the total votes of Class A and Class B members represented at any meeting in person or by proxy at the meeting, provided that a



quorum is present, or immediately, upon termination of the Director's membership. The Directors are authorized to manage the business of the Association and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the Association. The Directors shall elect a president and secretary from among the Directors or the members to serve as the officers of the Association. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

RULES AND REGULATIONS

The Homeowners' Association may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these Covenants provided that such additional rules and regulations are first adopted by a majority of the Board of Directors and then submitted to a meeting of the Homeowners' Association for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted provided they receive a 60% vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the Homeowners' Association with the Clerk and Recorder or Gallatin County, Montana, and mailed to each lot owner at their last known address.



2047228

Page: 5 of 11
09/07/2001 01:32P

ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, excluding lots owned by Developer, regardless of the size of the lot. Developer shall pay a flat assessment of \$5.00 per month for each unsold platted lot up to a maximum of \$5000 over the course of developing all residential lots in Phases 1, 2 and 3. This contribution by Developer shall commence six (6) months after the final plat is recorded for each phase.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the Association such assessments as the Association shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use



or abandonment of his lot or because he or she believes that these Covenants are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Association may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The Association may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the Association shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.



The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

ANNUAL ASSESSMENTS

The owner of each lot, excluding Developer, shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to all lots on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the Association for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last known address. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a



certificate signed by the Directors of the Association, setting forth whether the assessment of a specified lot has been paid.

CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS

Capital Improvements. The Association may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the Association.

Compliance. The Association may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or authority or responsibility granted to the Association, including but not limited to all rules and regulations adopted by the Association or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

EMERGENCY ASSESSMENTS

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the Association. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by state or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.



FORECLOSURE AND EXECUTION

As further security for payment of assessments levied by the Association, the Association may, in addition to foreclosing upon the lien as described above, execute upon a judgement through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the Association may bid upon and acquire such lot.

ACCUMULATION OF REMEDIES

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the Association and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the Association may have under law.

In addition, any owner or the Association, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of the covenants affecting the Elk Grove Community. In any such action for the enforcement of covenants, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

NOTICES

Each owner shall register with the Association, a current mailing address and shall promptly notify the Elk Grove Homeowners' Association of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, return receipt requested, addressed to the owner at the last mailing address registered with the Association.



SEVERABILITY

Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

NO WAIVER

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

IN WITNESS WHEREOF, this Declaration has been executed this 26 day of June, 2001.

ELK GROVE DEVELOPMENT COMPANY,
a Montana corporation,

BY: [Signature]
Its: President

STATE OF MONTANA)
 :SS.
COUNTY OF GALLATIN)

On this 26th day of June, 2001, before me, the undersigned officer, personally appeared Jay Josephs, known to me to be the person described in and who executed the foregoing instrument as President of Elk Grove Development Company, a Montana corporation company, and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of Elk Grove Development Company, for the purposes herein contained.

